IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. A No. 442 of 2004

Decided on : September 10, 2007

Anita **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. N.K. Thakur, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellant has been convicted of an offence under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, for allegedly being in exclusive and conscious possession of 2.5 kgs. of *Charas* and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo simple imprisonment for a further period of six months.

3. First, the prosecution version may be noticed. Appellant was travelling by a public transport bus, on 5.1.2003, within the area of Police Station, Aut, in Mandi district, when PW-8 Dhabe Ram, SI/SHO of Police Station, Aut, got the bus stopped to search the passengers and their baggage. Appellant was suspected to be carrying some contraband, tied around her waist. She was informed that it was intended to search her person, as she appeared to be carrying some contraband and that in case she so desired search of her person could be arranged in the presence of

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Whether reporters of the local papers may be allowed to see the judgment?

a Magistrate or a Gazetted Officer. She opted for the search of her person on the spot by PW-8 SI Dhabe Ram. When the search was sought to be conducted through lady Constable Vandana (PW-2), the appellant is alleged to have herself produced three plastic packets. Two of such packets contained five small packets each and one packet contained four small packets. All the 14 packets found in three polythene packets were weighed. The total weight was 2.5 kgs. Two samples, each weighing 25 grams, were separated. One of the two samples was sent to the Chemical Examiner, who reported that the same contained resin to the extent of 30.28 per cent. On receipt of the said report, appellant was challaned.

4. Trial Court charged the appellant with the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act and put her on trial when she pleaded not guilty. At the end of the trial, the appellant was convicted and sentenced, as aforesaid.

5. Learned counsel representing the appellant has submitted that there is no evidence on the record suggesting that the sample, which has been sent for examination to the Chemical Examiner, was representative of the stuff found in all the 14 packets allegedly produced by the appellant. He has taken us through the testimony of PW-1 Sanjay Kumar, the Conductor of the bus, PW-2 Constable Vandana, who conducted the search, and PW-8 SI Dhabe Ram. None of the three witnesses has testified that the samples, which were separated on the spot, represented the stuff contained in all the 14 small sized packets. We have noticed that in the report that was sent from the spot to the Police Station for the formal registration of the case, i.e. Ex. PW-4/A, it is mentioned that the samples, which were separated on the spot, represented the stuff of all the 14 packets, because by means of a blade portions of *Chappatis* of *Charas* contained therein were cut, but the

mention in the said report cannot be used as substantive evidence. Testimony of the witnesses by whom and in whose presence the samples were taken alone could have been the substantive evidence in the case. And substantive evidence being not there, as already noticed, corroborative evidence in the form of mention in Ex. PW-4/A is of no avail to the prosecution.

6. In the light of what we have stated above, there cannot be any escape from the presumption that the sample which was analyzed by the Chemical Examiner, per report Ex. PW-8/B, had been taken from one of the 14 small packets produced by the appellant. There is no evidence on record indicating as to what was the weight of each of the 14 small packets or to be precise as to what was the weight of the packet from which the samples were taken. Therefore, we are left with no alternative but to assume that the weight of each of the 14 packets was equal. The total weight of the recovered stuff was 2.5 kgs. Therefore, the weight of the stuff contained in one, out of the 14 packets, is supposed to be around 180 grams. This way the appellant is to be presumed to have been in possession of only 180 grams stuff.

7. Next submission made by the learned counsel is that the entire stuff recovered from the appellant was not *Charas* but only its resin content could be said to be *Charas*, in view of the law laid down by a Division Bench of this Court in *Dharam Pal versus State of H.P. and another appeal (Latest HLJ 2007 (HP) 827)*.

8. This Court in the above referred to judgment has held that as per definition of "*Charas*" contained in clause (a) of sub Section (iii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, only the resin content of the stuff is *Charas*. Therefore, only that much of the stuff, recovered from the appellant, is to be treated as *Charas* as is equal to the resin content of it. As per report of the Chemical Examiner, the

sample contained only 30.28 per cent resin or say *Charas.* That means, total quantity of the *Charas* in the stuff presumed to have been recovered from the appellant was 54 grams, which constitutes small quantity. Punishment prescribed for possession of small quantity of *Charas* is imprisonment which may extend to six months or fine which may extend to ten thousand rupees or both.

9. Looking to the above stated position, we hold that the appellant is guilty of offence of possessing small quantity of *Charas*, which is punishable under Section 20(A) of the Narcotic Drugs and Psychotropic Substances Act. Consequently, appeal is partly accepted. Judgment of the trial Court is modified. Conviction of the appellant for possessing 2.5 kgs. of *Charas* under Section 20 (C) of the Narcotic Drugs and Psychotropic Substances Act is set aside. Punishment for the said offence is also set aside. The appellant is convicted of the offence punishable under Section 20(A) of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo rigorous imprisonment for six months. She, having served the jail term for a period longer than the period of sentence awarded hereby, is ordered to be set at liberty forthwith, in case her detention is not required in any other case.

10. Appeal stands disposed of.

(Surjit Singh), J

September 10, 2007(sd) **(Surinder Singh), J**